BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD SHATTO Claimant	)	
VS.	)	
HARLAN CORPORATION Respondent	)	Docket No. 1,008,488
AND	)	
COMMERCE & INDUSTRY INS. CO. Insurance Carrier	)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the March 4, 2008, Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on June 10, 2008. Thomas Stein, of Kansas City, Missouri, appeared for claimant. William G. Belden, of Merriam, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found that claimant was unable to perform the accommodated job with respondent and made a good faith effort to perform that job. The ALJ found, however, that after he was terminated by respondent, claimant did not demonstrate a good faith job search effort and imputed a post injury wage of $9.35 per hour based upon claimant's wage earning ability. The ALJ computed claimant's wage loss to be 46 percent. The ALJ found the task loss opinions of Dr. James Stuckmeyer, Dr. Terrence Pratt and Dr. Chris Fevurly to be equally credible and computed claimant's task loss to be 51.5 percent. Accordingly, the ALJ found claimant had a work disability of 48.75 percent. Concerning claimant's functional impairment, the ALJ again found the ratings of Drs. Stuckmeyer, Pratt and Fevurly to be equally credible and held that claimant's functional impairment was 15 percent to the body as a whole. Also, the ALJ found that there was no specific evidence of claimant's future medical needs and, therefore, he made no specific award of future medical benefits. The Award states: "The respondent's duty to provide medical treatment remains after the issuance of an award. Any disputes over

future medical benefits may be addressed by the post-award medical procedures of K.S.A. 44-510k."[1]

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Respondent requests review of the nature and extent of claimant's functional disability and whether claimant is entitled to a work disability; whether claimant is entitled to compensation from April 23, 2004, through November 23, 2004, because of claimant's unreasonable refusal to submit to an independent medical examination, and whether claimant is entitled to future medical benefits.

Claimant argues that the credible medical evidence shows that he has complex regional pain syndrome (CRPS) that prevented him from returning to the work respondent offered. Claimant contends that at best, he is physically capable of earning $9.35 an hour and that imputing this wage to him entitles him to a work disability of 48.75 percent. Claimant denies having refused to submit to an independent medical examination. Finally, claimant asserts that he is entitled to future medical benefits. Accordingly, claimant requests that the Board affirm the Award of the ALJ.

The issues for the Board's review are:

(1) What is the nature and extent of claimant's impairment?

(2) Did claimant unreasonably refuse to attend a scheduled independent medical examination and, if so, should his entitlement to compensation be suspended from April 23, 2004, through November 23, 2004, because of his refusal?

(3) Is claimant entitled to future medical benefits?

FINDINGS OF FACT

Claimant had been employed by respondent for 22 years as an assembly mechanic building tug tractors. His job was very physical and required him to do a lot of bending and heavy lifting. On October 11, 2002, he was carrying boxes and walked into a rack that was sitting in an aisle. His foot hooked under the rack and he fell into it, fracturing some ribs. He felt pain from his hips to his shoulders. Three days later, he went to the hospital for treatment. The hospital referred him back to his employer because he suffered a work-related accident. He was sent by respondent to Dr. Becker at the Kansas University

[1] ALJ Award (Mar. 4, 2008) at 5.

Medical Center for pain management. He was also seen by Dr. Albright of Occupational Medicine and by his personal physicians.

Claimant remained at work performing light duty work building dash assemblies until sometime in April 2003. He returned to respondent in November 2003 to discuss returning to work. At that time, he had a 60-pound weight limitation from Dr. Pratt. However, claimant told his supervisor that he could not perform work that required lifting up to 60 pounds with no twisting and requested work that was within the limitations he felt he had. Respondent decided not to put claimant back to work. Claimant next returned to respondent in an effort to return to work sometime in March or April 2004. He acknowledged that between November 2003 and March or April 2004, he had not worked anywhere, nor had he looked for work elsewhere. In March or April 2004, respondent provided claimant with light duty assembly work at the same rate of pay he had been making before his accident. However, claimant had trouble performing some of the assembly work and was having pain in his mid-back in the area of his ribs. Claimant requested a lighter job that would allow him to get off his feet. However, respondent did not provide him with lighter work. Claimant again returned to work for respondent in January 2005. He was put on light duty work but was expected to lift 60 pounds. He worked only two days, after which he took vacation. He testified that he did not return to work after his vacation because he was fired. Claimant has not worked anywhere since January 2005.

Claimant was seen by Dr. Jeffrey Kaplan, who diagnosed him with CRPS. Dr. Kaplan's letter to claimant's attorney dated October 7, 2005, states: "My current diagnosis of [claimant's] medical status is reflex sympathetic dystrophy (complex regional pain syndrome) directly related to his injury of October 12, 2002."[2] Dr. Kaplan referred claimant to Dr. Patrick Griffith.

Claimant initially saw Dr. Griffith on June 21, 2005, complaining of a burning, sharp pain in his upper extremities, left worse than right. Dr. Griffith performed a stellate ganglion block to rule out CRPS. Dr. Griffith's report of September 20, 2005, states:

> [Claimant] has a very complicated case and multiple pain problems. As you remember, he had a work-related injury in October 2002. At that time, he had fallen and injured his left chest and sustained rib fractures. He complained of neck pain and low back pain after the fall. When I first saw him in June [2005] he had complaints of severe left facial pain as well as severe upper extremity pain. Dr. Kaplan was concerned that perhaps he had complex regional pain syndrome of the left upper extremity.
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> He underwent a single thoroscopically directed left stellate ganglion block and the sympathetic maintained pain in the left upper extremity seemed to at least

[2] P.H. Trans. (Dec. 12, 2005), Cl. Ex. 2.

> stabilize. It is still present, but it is not as bad. He also has chronic left-sided facial pain, but again that seemed to be improved with that problem.[3]

Claimant saw Dr. Griffith again on July 6, 2005, and reported he had marked relief of his numbness and tingling in his face for two hours after the procedure, but all the symptoms returned. He complained that his pain was worse in his low back and down his legs. Dr. Griffith then gave claimant a lumbar epidural steroid injection. Claimant returned for a follow up on July 21, 2005, and told Dr. Griffith that the lumbar epidural steroid injection was helpful with his low back pain but he continued to have pain down his legs and numbness in his face. Dr. Griffith then performed a thoracic epidural steroid injection.

At the request of respondent, claimant was examined by Dr. Terrence Pratt on June 6, 2003. Dr. Pratt is a board certified independent medical examiner who is also board certified in physical medicine and rehabilitation. Claimant told Dr. Pratt that about eight weeks after his work-related accident, he developed discomfort in his mid back which progressed to his low back. As of the date he was seen by Dr. Pratt, claimant's primary symptoms were in the center of his mid back with burning and severe pain. The symptoms radiated less frequently across the thoracic region to the anterior lower chest wall or rib region. He also reported random nerve pain throughout his body. Intermittently, when ambulating, the symptoms extended to his tail bone and lower extremities. When relaxing, his whole body tingled with involvement of the upper and lower extremities. He had left lower anterior chest wall soreness and tenderness after bending. Occasionally he had cervical involvement that radiated bilaterally to the bottom of his jaws.

Upon examination, Dr. Pratt stated that claimant's cervical, thoracic and lumbosacral regions had no palpable tenderness. Claimant had limited thoracic rotation. He had no specific findings over his chest wall, in spite of that being the area of his pain cycles. He had nondermatomal sensory loss and generalized giveaway weakness on motor assessment. His gait pattern was within normal limits. There were no findings suggestive of upper motor neuron involvement. Claimant had inappropriate responses on Waddell's test with rotation, as well as regional disturbances and overreaction. Dr. Pratt recommended an MRI of the thoracic region to rule out a diskogenic component to claimant's symptoms because of the limitations in the evaluation due to inappropriate responses. Until the MRI was completed, Dr. Pratt recommended claimant not perform frequent twisting and limit lifting to 30 pounds.

Claimant did not have an MRI but, instead, a thoracic CT was ordered, which revealed a left ninth and tenth rib fracture without significant displacement. After receiving this report, Dr. Pratt recommended that claimant avoid frequent twisting and limit maximum lifting to between 50 and 60 pounds.

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[3] P.H. Trans. (Dec. 5, 2005), Cl. Ex. 1 at 1.

Based on the AMA *Guides*,[4] Dr. Pratt found that claimant had a 5 percent permanent partial impairment for diagnosis related estimate (DRE) Category II thoracolumbar involvement. Dr. Pratt found that claimant had residual involvement with limitations in active movement of the thoracic region with a history of chest wall trauma and rib fractures without significant displacement. In Dr. Pratt's opinion, claimant did not require additional medical treatment. Dr. Pratt reviewed a task list prepared by Dick Santner. Of the 15 tasks on the list, Dr. Pratt opined that claimant was unable to perform 5 for a task loss of 33 percent.

Dr. Pratt reviewed the records of Dr. Griffith concerning claimant's stellate ganglion block. A positive response of a stellate ganglion block helps confirm the diagnosis of CRPS. The stellate ganglion block was administered in claimant's cervical region. Dr. Pratt could not tell from the records whether claimant had a positive response. The anesthesiologist did not call it a positive response but reported relief of numbness and tingling in claimant's face for two hours but a return of all the symptoms. Dr. Pratt would not say that this was a positive response. Dr. Pratt interpreted the report of the stellate ganglion block as being administered for the left upper extremity to rule out the possibility of CRPS in the left upper extremity. Dr. Pratt opined that the report did not indicate the presence of CRPS in claimant's left upper extremity. For Dr. Pratt to have considered it as being a positive outcome, the reported improvement should have been located in claimant's left upper extremity as opposed to the face.

Dr. Chris Fevurly, who is board certified in internal medicine, preventative medicine and occupational medicine, examined claimant at the request of respondent. Claimant had originally appeared for the examination on April 23, 2004. At that time, he brought a family member with him in order to videotape the examination. Dr. Fevurly told claimant he refused to allow the family member to videotape the examination and offered to have the examination videotaped by his office and charge claimant for that service. Claimant refused, and the examination was not held on that date.

The examination was rescheduled for November 23, 2004. On that date, claimant complained to Dr Fevurly of midback pain described as a burning nerve-like pain, which radiated into his left chest wall and upwards into the left side of his face and tongue. Claimant had occasional radiation of pain into both arms and both feet. He denied numbness and tingling. He complained of headaches and a persistent popping and tenderness over his left chest wall.

Upon examination, Dr. Fevurly found no obvious sensory deficits along the left side of claimant's face and no asymmetry in appearance of the tongue. There was normal facial nerve function with no facial asymmetry. He had full range of motion in the upper

[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

extremities with no evidence of impingement in either shoulder. He had mild to moderate tenderness along the left lateral chest wall. He had moderate tenderness to percussion over the thoracolumbar area. He had a pain disability index score of 63 out of 70, which Dr. Fevurly thought could be consistent with symptom magnification. The score showed that claimant's perception of his disability was very severe, more than the standard person with either end-stage cancer or amyotrphic lateral sclerosis, who average a score of 45 on the same index.

Dr. Fevurly diagnosed claimant with chronic thoracolumbar spine pain with no evidence of cord impingement or radiculopathy from the thoracic or lumbar spine. The thoracolumbar pain developed about six to eight weeks after the accident. There was evidence of healing of rib fractures that were caused by the accident, and claimant had mild-to-moderate tenderness along the left side of his chest wall with palpation. Dr. Fevurly also opined that claimant had mild-to-moderate symptom magnification, which Dr. Fevurly opined was likely a manifestation of learned illness behavior. He did not believe that claimant was a malingerer. Nor did he think claimant was consciously exaggerating his pain. Dr. Fevurly believed that claimant reached maximum medical improvement on September 16, 2003.

Utilizing the AMA *Guides*, Dr. Fevurly believed that claimant had a 5 percent whole person impairment from the work-related injuries based on chronic pain complaints in the left lateral chest wall and thoracolumbar area. He believed that claimant was qualified to return to work in the medium heavy level with lifting to 60 pounds on an occasional basis. Concerning future medical needs, he felt there was no indication or expectation of surgery or other pain clinic intervention. He suggested that claimant perform a daily independent aerobic conditioning program. Dr. Fevurly reviewed a task list prepared by Dick Santner. Of the 15 tasks on that list, Dr. Fevurly opined that claimant was unable to perform 5 of the 15 tasks on the list for a 33 percent task loss.

Dr. James Stuckmeyer, a board certified orthopedic surgeon, examined claimant on November 2, 2006, at the request of claimant's attorney. Claimant complained to Dr. Stuckmeyer of ongoing multiple body complaints, including left-sided chest wall discomfort which he described as nerve pain. Claimant said his left arm went numb. He had mid thoracic and low back pain. He had left-sided facial discomfort. Claimant had diffuse tenderness in his thoracic and lumbar spine. He had full range of motion of the lumbar spine. Dr. Stuckmeyer found no evidence of spasm in the thoracic or lumbar spine.

Dr. Stuckmeyer did not see any signs consistent with CRPS in his physical examination of claimant. He did not see any specific obvious swelling, temperature changes or abnormal coloring. However, he said the absence of those visual signs would not eliminate the diagnosis of CRPS. He assessed that claimant had CRPS with ongoing symptoms based on the fact that he responded temporarily to a stellate ganglion block. Dr. Stuckmeyer opined that claimant's work-related accident triggered a neurological event causing his current symptoms.

Based on the AMA *Guides*, Dr. Stuckmeyer rated claimant as having a 25 percent permanent partial impairment to the body as a whole for post left ninth and tenth rib fractures with resultant ongoing intercostal neuralgia and a generalized complex regional pain-type syndrome. He did not rate claimant's depression. Nor did he find claimant had any impairment attributable to the rib fractures, although he believed the rib fractures started claimant's sympathetic problems. He also believed that claimant would need ongoing pain management.

Dr. Stuckmeyer placed restrictions on claimant of no prolonged standing or walking, no repetitive lifting or bending, maximum lifting to the chest of 25 pounds and maximum overhead lifting of 5 to 10 pounds. Dr. Stuckmeyer reviewed a task list prepared by Mary Titterington. Of the ten tasks on that list, Dr. Stuckmeyer opined that claimant is unable to perform seven, for a task loss of 70 percent.

Mary Titterington, a vocational rehabilitation counselor, met with claimant on February 19, 2007, at the request of claimant's attorney. She prepared a list of 10 tasks that claimant performed in the 15-year period before his work-related accident of October 11, 2002.

Ms. Titterington determined claimant's current medical status by referring to the medical report of Dr. Stuckmeyer and from claimant. He had fractured his ninth and tenth rib and had significant intercostal neurological pain in the rib and back area. She noted he had been diagnosed with CRPS and with significant depression. Claimant exhibited anxiety and anger during the interview.

Claimant told Ms. Titterington that he had dropped out of high school in the beginning of his junior year. He joined the military and obtained a GED while in the military. When seen by Ms. Titterington, he was unemployed and did not believe he could work. He had not sought work because he did not think he could tolerate working.

Ms. Titterington opined that with Dr. Stuckmeyer's restrictions, claimant would be able to return to the open labor market performing sedentary and or a very limited range of light work. With claimant's past work skills, he could qualify for jobs in the $9.90 to $11.20 per hour range performing tool repair and precision assembler positions. Or, if claimant went to the unskilled labor market, he could earn in the range of $7.50 to $10.35 per hour working as a night desk clerk, security monitor, or a self-service gas station attendant. With the anxiety he showed during their interview, Ms. Titterington believed claimant would have a difficult time interviewing, conducting a job search, and holding a job. If she assumed claimant's impression that his functioning level is so low that he is lying down a majority of the day was true Ms. Titterington said that claimant would be unemployable and would have a 100 percent wage loss.

Dick Santner, a vocational rehabilitation counselor, interviewed claimant on July 25, 2007, at the request of respondent. He prepared a list of 15 tasks that claimant performed

in the 15-year period before his work-related accident of October 11, 2002. Claimant told Mr. Santner that he had not looked for work anywhere. Mr. Santner believed that claimant was capable of earning between $7.50 per hour and $11.20 per hour. He agreed with Ms. Titterington's opinion concerning the jobs that claimant had the physical capability of performing.

(1) What is the nature and extent of claimant's impairment?

PRINCIPLES OF LAW

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 44-510e(a) states in part:

> Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

In *Foulk*,[5] the Kansas Court of Appeals held:

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[5] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 284, 887 P.2d 140, (1994), *rev. denied* 257 Kan. 1091 (1995).

> The legislature clearly intended for a worker not to receive compensation where the worker was still capable of earning nearly the same wage. Further, it would be unreasonable for this court to conclude that the legislature intended to encourage workers to merely sit at home, refuse to work, and take advantage of the workers compensation system.

Later, in *Copeland*,[6] the Court of Appeals stated:

> In attempting to harmonize the language of K.S.A. 44-510e(a) with the principles of *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), the factfinder must first make a finding of whether a claimant has made a good faith effort to find appropriate employment. If such a finding is made, the difference in pre- and post-injury wages can be made based on the actual wages.

The good faith of an employee's efforts to find or retain appropriate employment is determined on a case-by-case basis.[7]

The Kansas Court of Appeals in *Watson*[8] held the failure to make a good faith effort to find appropriate employment does not automatically limit the permanent partial general disability to the functional impairment rating. Instead, the court reiterated that when a worker failed to make a good faith effort to find employment, the post-injury wage for the permanent partial general disability formula should be based upon all the evidence, including expert testimony concerning the capacity to earn wages.

> In determining an appropriate disability award, if a finding is made that the claimant has not made a good faith effort to find employment, the factfinder must determine an appropriate post-injury wage based on all the evidence before it. This can include expert testimony concerning the capacity to earn wages.[9]

Despite clear signals from recent decisions of the Kansas Supreme Court that the literal language of the statutes should be applied and followed whenever possible,[10] there has yet to be a specific repudiation of the good faith requirement by the Supreme Court. Absent an appellate court decision overturning *Copeland* and its progeny, the Board is

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[6] *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, Syl. 7, 944 P.2d 179 (1997).

[7] *Parsons v. Seaboard Farms, Inc.*, 27 Kan. App. 2d 843, 484, 9 P.3d 591 (2000).

[8] *Watson v. Johnson Controls, Inc.*, 29 Kan. App. 2d 1078, 36 P.3d 323 (2001).

[9] *Id.* at Syl. ¶ 4.

[10] See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007), and *Graham v. Dokter Trucking Group*, 284 Kan. 547, 161 P.3d 695 (2007).

compelled by the doctrine of *stare decisis* to follow those precedents. Consequently, the Board must look to whether claimant demonstrated a good faith effort post injury to perform the accommodated job with respondent and, thereafter, to find appropriate employment.

ANALYSIS AND CONCLUSION

Claimant admits that he did not look for work after he was terminated by respondent. Claimant asks that the ALJ's Award be affirmed. As such, claimant acknowledges that a wage should be imputed to him based upon his post-injury ability to earn wages. Respondent, however, argues that claimant's permanent partial disability award should be limited to claimant's percentage of functional impairment because claimant failed to make a good faith effort to perform the accommodated work that respondent offered him. Therefore, the wage claimant would have earned working for respondent should be imputed to him. As this work would have continued to pay claimant at least 90 percent of his preinjury average weekly wage, respondent contends that claimant is not entitled to a work disability. Claimant counters that he attempted the accommodated work but was unable to perform that job due to his injuries.

The ALJ found that under the circumstances, claimant's refusal of the accommodated job did not amount to a lack of good faith. The Board agrees and adopts the ALJ's findings and conclusions concerning the nature and extent of claimant's disability as its own. It is not necessary to repeat them here.

(2) Did claimant unreasonably refuse to attend a scheduled independent medical examination and, if so, should his entitlement to compensation be suspended from April 23, 2004, through November 23, 2004, because of his refusal?

PRINCIPLES OF LAW

K.S.A. 44-515 states in part:

> (a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable health care providers, selected by the employer, and shall so submit to an examination thereafter at intervals during the pendency of such employee's claim for compensation, upon the request of the employer . . . .
>
> (b) If the employee requests, such employee shall be entitled to have health care providers of such employee's own selection present at the time to participate in such examination.

K.S.A. 44-518 states in part:

> If the employee refuses to submit to an examination upon request of the employer as provided for in K.S.A. 44-515 and amendments thereto or if the employee or the employee's health care provider unnecessarily obstructs or prevents such examination by the health care provider of the employer, the employee's right to payment of compensation shall be suspended until the employee submits to an examination and until such examination is completed. No compensation shall be payable under the workers compensation act during the period of suspension.

ANALYSIS AND CONCLUSION

The ALJ did not address the issue of suspending benefits in his March 4, 2008, Award, nor did he address it in his Order of October 7, 2004. But respondent did not request a suspension of benefits in its July 28, 2004, Motion to Dismiss. Respondent first raised the remedy of suspending compensation for the period of April 23, 2004, through November 23, 2004, in its February 27, 2008, submission letter to the ALJ. Before this, the respondent had only sought an outright dismissal of the case.

The purpose of the remedy in K.S.A. 44-518 of suspending benefits until the claimant submits to an examination is to compel claimant to submit to the examination. The examination by Dr. Fevurly was completed on November 23, 2004. There is no evidence that the delay between the initial examination date and the ultimate date on which the examination was accomplished either prejudiced the respondent or increased the cost of the examination. This issue, if not moot, is de minimus. Claimant was not receiving temporary total disability compensation during this time period, so it could not have been suspended. And to suspend permanent partial disability compensation during this period would not even delay claimant's receipt of those benefits, as his entire award is already past due. The respondent's request to suspend benefits is denied.

(3) Is claimant entitled to future medical benefits?

PRINCIPLES OF LAW

K.S.A. 44-510h(a) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

K.S.A. 2007 Supp. 44-510k(a) states in part:

> (a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters.

ANALYSIS AND CONCLUSION

The ALJ's Award provides: "The respondent's duty to provide medical treatment remains after the issuance of an award. Any disputes over future medical benefits may be addressed by the post-award medical procedures of K.S.A. 44-510k."[11] Accordingly, the ALJ did not award claimant ongoing medical treatment. Instead, the ALJ simply left open claimant's right to seek additional medical treatment in the future. This would require claimant to file a post-award application for hearing under K.S.A. 44-510k and prove both a present need for medical care and that "the care is necessary to cure or relieve the effects of the accidental injury." In other words, claimant would have the burden to prove that his current condition and need for medical treatment are a direct consequence of his work-related injury. This is something that claimant will have to prove in the future if and when he applies for additional treatment. As the claimant is not requesting and the ALJ did not award ongoing medical care, claimant did not need to prove this now. The ALJ did not err by leaving open claimant's right to seek future medical treatment upon application and approval.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated March 4, 2008, is affirmed.

IT IS SO ORDERED.

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[11] ALJ Award (Mar. 4, 2008) at 5.

Dated this _____ day of June, 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Thomas Stein, Attorney for Claimant
William G. Belden, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge